

# **Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities**

Interim Report to:

The Honorable Thomas E. Perez  
United States Secretary of Labor

The United States Senate  
Committee on Health, Education, Labor and Pensions

The United States House of Representatives  
Committee on Education and the Workforce

September 15, 2015

Letter of Transmission  
From Chairman Mank

## Disclaimer

This report is produced by the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the “Committee”). The Committee is established under section 609 of the Rehabilitation Act of 1973, as amended by section 461 of WIOA, to advise the Secretary of Labor in three areas:

- (1) Ways to increase competitive integrated employment opportunities for individuals with intellectual or developmental disabilities (IDD) or other individuals with significant disabilities.
- (2) The use of certificate program carried act under section 14(c) of the Fair Labor Standards Act (FLSA) for the employment of individuals with IDD or other individuals with significant disabilities; and
- (3) Ways to improve oversight of the use of such certificates.

In accordance with the statute, this Committee has brought together leaders from numerous federal agencies with a diverse group of critical stakeholders including individuals with IDD and other significant disabilities, providers of employment services, representatives of national disability advocacy organizations, academic experts with expertise on employment and wage policy issues for individuals with IDD or other significant disabilities, representatives of the employer community and others with expertise on increasing competitive integrated employment opportunities for individuals with IDD or other significant disabilities.

The Department of Labor established the Committee on September 15, 2014 for a two year period, in accordance with the provision of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. FACA helps ensure the independent nature of the body and requires that the Department not exercise “inappropriate influence” over the advice and recommendations in its report. Consistent with this provision, neither this report, nor the preliminary recommendations it contains, have been cleared or approved by the Secretary of Labor, the U.S. Department of Labor, nor the Administration, and, as such, the views expressed in this report should not be regarded as those of the Secretary, the Department, or the Administration. The report represents the collaborative work and preliminary recommendations of the Committee as a whole.

## **Dedication**

To be provided by Chairman Mank.

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## **Members of the Advisory Committee**

### **David Mank, Chair**

Director, Indiana Institute on Disability and Community, Indiana University  
Bloomington, IN

### **Alison Barkoff**

Director of Advocacy, Bazelon Center for Mental Health Law  
Washington, DC

### **James Brett**

President and Chief Executive Officer, New England Council  
Dorchester, MA  
*Appointed May 8, 2015.*

### **Valerie Brooke**

Director of Training and Business Connections, Virginia Commonwealth University  
Richmond, VA

### **Cesilee Coulson**

Executive Director, Washington Initiative for Supported Employment  
Seattle, WA

### **Sharyn Hancock**

Disability Resource Coordinator, Workforce Essentials, Inc.  
Clarksville, TN

### **Patrick Hendry**

Vice President, Consumer Advocacy, Mental Health America  
Alexandria, VA

### **Brian Itzkowitz**

President and Chief Executive Officer, Goodwill Industries of Arkansas  
Little Rock, AK

### **\*Janet LaBreck**

Commissioner  
Rehabilitation Services Administration, U.S. Department of Education

### **\*Sharon Lewis**

Principal Deputy Administrator, Administration for Community Living  
U.S. Department of Health and Human Services

**Rita Landgraf**

Cabinet Secretary, Delaware Department of Health and Social Services  
New Castle, DE

**Karen McCulloh**

Owner, Karen McCulloh & Associates Consulting  
Morton Grove, IL

**Christine McMahon**

President and Chief Executive Officer, Fedcap  
New York, NY

**Oswald “Oz” Mondejar**

Senior Vice President of Mission and Advocacy  
Spaulding Rehabilitation Network and Partners HealthCare at Home  
Charlestown, MA

**Ruby Moore**

Executive Director, Georgia Advocacy Office  
Decatur, GA

**Ari Ne’eman**

President, Autistic Self-Advocacy Network (ASAN)  
Washington, DC

*Appointed May 8, 2015 to replace Mark Perriello.*

**\*John O’Brien**

Senior Policy Advisor and Elderly Health Programs Group  
Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services

**Steve Pemberton**

Chief Diversity Officer and Divisional Vice-President, Walgreen Co.  
Deerfield, IL

**Santa Perez**

Project Co-Coordinator, People First of Nevada  
Las Vegas, NV

**Mark Perriello**

President and CEO, the American Association of People with Disabilities  
Washington, DC

*Resigned: April 26, 2015.*

**Lisa Pugh**

Public Policy Director, Disability Rights Wisconsin  
Madison, WI

**Fredric Schroeder**

Executive Director, National Rehabilitation Association  
Alexandria, VA

**\*Jennifer Sheehy**

Acting Assistant Secretary, Office of Disability Employment Policy  
U.S. Department of Labor

**\*David Weil**

Assistant Secretary, Wage & Hour Division  
U.S. Department of Labor

**\*Bob Williams**

Senior Advisor to the Deputy Commissioner, Office of Retirement and Disability Policy  
U.S. Social Security Administration; the Social Security Commissioner's Designee

**\*Portia Wu**

Assistant Secretary, Employment & Training Administration  
U.S. Department of Labor

\* - denotes Federal Member

## **Executive Summary**

The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the “Committee”) was established under section 609 of the Rehabilitation Act of 1973, as amended by section 461 of the Workforce Innovation and Opportunity Act (WIOA) of 2014, to advise the Secretary of Labor in three areas:

- (1) Ways to increase competitive integrated employment opportunities for individuals with intellectual or developmental disabilities (IDD) or other individuals with significant disabilities;
- (2) The use of certificate program carried out under section 14(c) of the Fair Labor Standards Act (FLSA) for the employment of individuals with IDD or other individuals with significant disabilities; and
- (3) Ways to improve oversight of the use of such certificates.

The Committee was established in September 2014 according to the provisions of the Federal Advisory Committee Act (FACA), which helps ensure the independent nature of the Committee in providing advice and recommendations to the Administration. The full interim report represents the collaborative work of the Committee as a whole.

The primary purpose of the work of the Committee is to address issues, and make recommendations, to improve the employment participation of people with intellectual and developmental disabilities and others with significant disabilities by ensuring opportunities for competitive integrated employment. WIOA defines “competitive integrated employment” as:

Work performed on a full or part time basis for which an individual is:

- (1) Compensated at not less than federal minimum wage requirements or state or local minimum wage law (whichever is higher) and not less than the customary rate paid by the employer for the same or similar work performed by other individuals without disabilities;
- (2) At a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and
- (3) Presented, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

See Rehabilitation Act of 1973, Section 7(5) as amended by WIOA.

The Committee is comprised of eighteen (18) non-governmental members and seven (7) federal official members. The non-governmental members represent: self-advocates, providers of employment services, representatives of national disability advocacy organizations, experts with a background in academia, employer representatives and others with related expertise on competitive integrated employment.

In the subsequent Committee Charter (See Appendix B), the charge to the Committee was further clarified to include:

- Review existing Federal policy and make recommendations to break down barriers to competitive integrated employment;
- Provide recommendations to modernizing the service delivery system and expanding strategies for increasing competitive integrated employment;
- Recommend system-change strategies to ensure that competitive integrated employment is the first option for people with significant disabilities; and
- Review the use of the certificate program under section 14(c) (use of subminimum wages) and recommend ways to improve oversight and reduce reliance on such certificates.

### **Highlights of Preliminary Recommendations**

The work of the Committee began with its first meeting in January 2015, followed by full committee meetings in March, May and July 2015. The work of the Committee includes formation of four sub-committees. In addition, two ad-hoc committees were formed. These sub-committees are: Transition to Careers; Complexity and Needs in Delivering Competitive Integrated Employment; Marketplace Dynamics; Building State and Local Capacity; Section 14(c) Subminimum Wage Certificate Program; and AbilityOne Program. Following, are highlights of the Preliminary Recommendations of the Committee.

The primary focus of the work of the Committee and the formation of preliminary recommendations is: (1) to increase opportunities for competitive integrated employment; (2) to ensure competitive integrated employment is the first option for people with significant disabilities in order to increase the employment participation rate; and (3) to significantly reduce the use of 14(c) and the dependence on subminimum wages and segregated service placements.

### **Transition to Careers Sub-Committee**

The Preliminary Recommendations of the Transition to Careers Sub-Committee emphasize:

- Increasing opportunities for early work experiences for all youth with disabilities, including beginning transition at age 14, and conducting research of effective transition practices resulting in CIE for youth;
- Increasing nationwide opportunities for post-secondary education for youth with significant disabilities which includes CIE work experiences;
- Addressing family expectations for CIE at early ages;
- Creating seamless transition and systems integration in policy and funding for transition across related federal agencies; and
- Improving professional supports and incentives by improving school and provider competencies and providing technical assistance to states.

### **Complexity and Needs in Delivering Competitive Integrated Employment Sub-Committee**

The Preliminary Recommendations of the Complexity and Needs Sub-Committee emphasize:

- Aligning policy and practices to prioritize competitive integrated employment across federal agencies, “including the Department of Labor, Department of Health and Human Services (including the Centers for Medicare & Medicaid Services), Department of Education (including the Rehabilitation Services Administration) and Social Security Administration.”
- Aligning across federal agencies the funding rules and payment methodologies to prioritize and incentivize CIE and help provide opportunities for CIE to people currently in segregated work and non-work day programs;
- Addressing real and perceived disincentives to employment caused by concerns about loss of healthcare benefits (Medicaid and/or Medicare) and/or cash benefits (Supplemental Security Income and/or Social Security Disability Insurance).
- Addressing systemic low expectations around employment by increasing knowledge of, and capacity to provide, effective practices for achieving CIE for people with significant disabilities.
- Improving accountability for achieving CIE and ensuring quality through the development of a uniform definition for CIE and requirements for collecting data and outcome measures at the federal and state levels.

### **Marketplace Dynamics Sub-Committee**

The Preliminary Recommendations of the Marketplace Dynamics Sub-Committee are focused on employer and business model issues for increasing CIE. These emphasize:

- Changing the narrative about hiring people with significant disabilities to promote hiring people with disabilities as good for business outcomes through a national education campaign;
- Creating a sustainable culture of inclusion and diversity through business to business communications and marketing to businesses of all sizes;
- Building better business partnerships between businesses, providers of employment services and government programs;
- Addressing training issues by improving provider competencies and developing national training requirements; and
- Addressing the complex issues of transportation in urban, sub-urban and rural America.

### **Building State and Local Capacity Sub-Committee**

The Preliminary Recommendations of the Building State and Local Capacity Sub-Committee emphasize:

- Expanded use of HCBS Waiver programs for CIE by changing the federal match requirements to states to incentivize CIE;
- Aligning and improving data systems on CIE outcomes;
- Promoting and funding innovations in new and existing provider organizations;
- Creating and funding professional development to improve provider competencies; and
- Providing funding for provider transformation.

### **Section 14(c) Subminimum Wage Certificate Program**

Each of the four initial sub-committees worked on the development of Preliminary Recommendations related to the 14(c) certificate program. These Preliminary Recommendations include attention to:

- The need for better data on the use of this program and its outcomes;
- Improving monitoring and oversight of the program;
- Aligning use of the program with modern federal disability policies, including the ADA and the Supreme Court's *Olmstead* decision, WIOA, and recent rules and guidance from the Centers for Medicare & Medicaid services;
- Considering a well-designed phase out of the program as a result of increasing CIE;
- Providing technical assistance to states and providers to reduce the use of the program; and
- Addressing concerns of unintended consequences by ensuring quality alternatives.

## **AbilityOne Program**

Two of the initial sub-committees addressed issues of the AbilityOne Program. The Preliminary Recommendations emphasize:

- Amending the JWOD Act to align with modern federal disability policies, including the Americans with Disabilities Act (ADA), and change the program to emphasize inclusion of people with significant disabilities alongside nondisabled peers in CIE workplaces instead of congregating and segregating people with significant disabilities.
- Creating an expectation that AbilityOne programs establish CIE as the expected and priority outcomes;
- Improving oversight of the program; and
- Creating improved data systems on the use and the outcomes of the program.

## **Conclusion**

The primary focus of the work of the Committee, and the formation of preliminary recommendations, is to increase opportunities for competitive integrated employment for individuals with intellectual or developmental disabilities (IDD) or other significant disabilities. Ensuring that competitive integrated employment is the first option for people with IDD or other significant disabilities will increase their employment participation rate and lead to a significant reduction in their placement in segregated work and non-work programs and in the use of 14(c) certificates for paying subminimum wages. The work of the Committee will continue as it prepares its Final Report to be delivered to the Secretary of Labor and Congress by September 15, 2016.

## Introduction: Setting the Context

The Workforce Innovation and Opportunity Act (WIOA), signed into law by President Obama on July 22, 2014, makes significant improvements in federal law for Americans with disabilities, including youth with disabilities as they transition from education to employment, by helping to ensure these citizens have opportunities to acquire the skills and training they need to maximize their potential and enter competitive integrated employment. Among the many provisions in WIOA designed to strengthen and improve employment for all individuals with disabilities is the establishment of an Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the Committee) under section 609 of the Rehabilitation Act of 1973, as amended by section 461 of WIOA.

Unemployment and absence from the national workforce among individuals with significant disabilities is a pervasive problem in the United States today. In particular, the drastically low unemployment rate and the even lower workforce participation rate for people with intellectual and developmental disabilities (IDD) has been widely documented<sup>1</sup>. While other people with disabilities experience extraordinarily low rates of workforce participation and unemployment, those with IDD have the lowest employment rates and the lowest compensation rates.<sup>2</sup> Those with IDD are currently the least likely disability group to be participating in competitive integrated employment. Increasing competitive integrated employment for individuals with IDD as well as those with other significant disabilities is a widely shared goal but one for which a truly comprehensive federal strategy has yet to be defined and implemented.

Currently, many people with IDD and other significant disabilities who are involved in paid work activity are working for sub-minimum wage under special certificates issued by the U.S. Department of Labor (DOL) Wage and Hour Division. Section 14(c) of the Fair Labor Standards Act (FLSA) permits the Secretary of Labor to issue certificates to employers permitting employment at subminimum wage if the Secretary deems this to be necessary to prevent the curtailment of employment opportunities for individuals with disabilities covered under these certificates.<sup>3</sup> As such, this provision permits employers to pay sub minimum wages only when an individual's disability impairs his or her productivity for the specific work being performed. DOL last amended the Section 14(c) regulations governing the program in 1989.

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<sup>1</sup> Unfinished Business: Making Employment of People with Disabilities a National Priority. U.S. Senate Health, Education, Labor and Pensions Committee. March, 2012. Access at: <https://www.disability.gov/resource/unfinished-business-making-employment-of-people-with-disabilities-a-national-priority/>

<sup>2</sup> Ibid.

<sup>3</sup> See Appendix D for the relevant statutory and regulatory provisions currently governing the administration of the Section 14(c) program.

Existing data confirms that individuals with IDD and other significant disabilities who are working earn subminimum wage in far greater numbers than those earning competitive wages.<sup>4</sup> Further, federal data confirms that most all people currently working under Section 14(c) subminimum wage certificates are working for community rehabilitation programs (CRPs) that typically receive public funding, including federal Medicaid and Vocational Rehabilitation dollars, to provide employment-related habilitation and rehabilitation services to individuals with disabilities.<sup>5</sup> Finally, the data suggests that most individuals with disabilities being paid subminimum wage under Section 14(c) are working in production facilities operated by these CRPs.<sup>6</sup>

Nationally, the focus and attention on increasing the competitive integrated employment participation rate among individuals with disabilities has been growing rapidly over the past decade. Leadership in this area has been provided by members of Congress, state governors and legislators, federal and state agencies, the business community, and the disability community itself. In determining the most effective strategies and comprehensive approach for increasing the participation of individuals with disabilities in competitive integrated employment, consideration of the role and impact of the Section 14(c) program on the current competitive integrated employment participation rate is crucial, especially examining the question of the future role and impact of Section 14(c).

In light of these realities, Congress established the Committee. The purpose of the committee is to prepare findings, conclusions and recommendations for the Secretary of Labor on:

- Ways to increase employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive integrated employment;
- The use of certificate program carried act under Section 14(c) of the Fair Labor Standards Act (FLSA) for the employment of individuals with intellectual or developmental disabilities or other individuals with significant disabilities; and
- Ways to improve oversight of the use of such certificates.

Within WIOA, *competitive integrated employment* generally means work performed on a full or part-time basis (including self-employment) for which an individual is:

- (1) Compensated at not less than federal minimum wage requirements or State or local minimum wage law (whichever is higher) and not less than the customary rate paid by

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<sup>4</sup> Butterworth et al (2013). *StateData: The National Report on Employment Services and Outcomes, 2013*. Boston, MA: Institute for Community Inclusion.

<sup>5</sup> GAO, September 2001, Special Minimum Wage Program, *Centers Offer Employment and Support Services to Workers with Disabilities, But Labor Should Improve Oversight* GAO-01-886, Page 9.

<sup>6</sup> Ibid.

the employer for the same or similar work performed by other individuals without disabilities;

- (2) At a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and
- (3) Presented, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

Rehabilitation Act of 1973, Section 7(5) as amended by WIOA.

According to DOL Secretary Thomas Perez, in his blog<sup>7</sup> announcing the formation of this Committee, “competitive integrated employment works — for individuals, for employers and for society. Models have shown repeatedly that people previously considered “unemployable” *can* work, *can* be productive and *can* achieve independence. As such, investing in this approach is a wise use of public funds.” In light of these truths, finding ways to make competitive integrated employment accessible for individuals with IDD and other significant disabilities should be a shared priority of governments and disability community stakeholders. Creating opportunities, removing barriers and expecting a substantial improvement in the workforce participation rate of individuals with IDD and other significant disabilities are all essential elements to ensure full economic inclusion and self-sufficiency. As the nation celebrates the 25<sup>th</sup> anniversary of the passage of the Americans with Disabilities Act, it is indeed fitting that attention is turned to vastly improving opportunities for competitive integrated employment for those American with disabilities who have had the least opportunity up to now to access this critical aspect of our American way of life.

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<sup>7</sup> To read the full blog by Secretary Perez, see: <http://blog.dol.gov/2015/01/05/ensuring-opportunity-extends-to-all/>

# Chapter One: The Committee Process to Date

## Establishing the Committee

WIOA directs the Secretary of Labor to establish the Committee within sixty (60) days of the passage of the law. WIOA Section 609 dictates that the Secretary of DOL shall appoint the members of the committee, and that the composition of the Committee shall be as follows:

- (1) The Assistant Secretary for Disability Employment Policy, the Assistant Secretary for Employment and Training, and the Administrator of the Wage and Hour Division, of the Department of Labor;
- (2) The Commissioner of the Administration on Intellectual and Developmental Disabilities, or the Commissioner's designee;
- (3) The Director of the Centers for Medicare & Medicaid Services of the Department of Health and Human Services, or the Director's designee;
- (4) The Commissioner of Social Security, or the Commissioner's designee;
- (5) The Commissioner of the Rehabilitation Services Administration, or the Commissioner's designee; and
- (6) Representatives from constituencies consisting of—
  - a) Self-advocates for individuals with intellectual or developmental disabilities;
  - b) Providers of employment services, including those that employ individuals with intellectual or developmental disabilities in competitive integrated employment;
  - c) Representatives of national disability advocacy organizations for adults with intellectual or developmental disabilities;
  - d) Experts with a background in academia or research and expertise in employment and wage policy issues for individuals with intellectual or developmental disabilities;
  - e) Representatives from the employer community or national employer organizations; and
  - f) Other individuals or representatives of organizations with expertise on increasing opportunities for competitive integrated employment for individuals with disabilities.

The Secretary of DOL charged the Department's Office of Disability Employment Policy (ODEP) with providing administrative support to the Committee and coordinating the process of appointing members to the Committee. The Deputy Assistant Secretary of ODEP is appointed to be the Designated Federal Officer (DFO) for the Committee.

FACA requires that committee memberships be "fairly balanced in terms of the points of view represented and the functions to be performed." Selection of committee members is made based on the FACA's requirements and the potential member's background and qualifications. Consistent with FACA, ODEP published a Notice in the Federal Register on September 12, 2014 announcing establishment of the Committee and inviting interested parties to submit nominations of for non-governmental members to represent the six constituencies listed in 6(a) through 6(f) above on the Committee. The notice announced the Department's intent to appoint 10-12 members from among these constituencies ensuring at least one member representing each of the six types of constituencies. The notice outlined the Committee's obligations to meet at least eight times over a two year period. The notice also outlined the required process to nominate someone for the Committee. The deadline for submitting nominations was October 14, 2014.

In seeking 10-12 non-governmental members for the Committee, the goal was to ensure broad representation and sufficient input from stakeholders in the formation of Committee recommendations. To this end, in addition to publishing the notice in the Federal Register, DOL also worked closely with other Federal agencies represented on the Committee to identify potential Committee members. ODEP, on behalf of DOL, also leveraged the full range of outreach tools used by the Employment and Training Administration (ETA), ODEP, the Wage and Hour Division (WHD), and DOL's Office of Public Engagement to reach a broad spectrum of stakeholders and seek assistance in identifying as many potential candidates as possible. This included social media outreach, such as email listings, web postings and other strategies.

Except as otherwise required by Section 609, the goals in appointing the non-governmental Committee members included formation of a fairly balanced committee with members coming from a cross-section of those directly affected, interested and qualified as appropriate to the nature and functions of the Committee, and ensuring consistency with the applicable FACA regulations. Thus, the final composition of the Committee depended upon several factors, including: (i) the Committee's objectives; (ii) potential geographic, ethnic, social and environmental impact of the Committee's recommendations; (iii) the types of specific perspectives required, as previously outlined; (iv) the need to obtain divergent points of view on the issues before the Committee; and (v) the relevance of state, local or tribal governments to the development of the Committee's recommendations.

Through comprehensive outreach, DOL received over 280 nominations for public membership. Due to the very large number of individuals nominated to serve on the Committee and the DOL's goal to achieve the greatest impact, scope and credibility among diverse stakeholders, ODEP requested to increase the number of non-governmental members of the committee from 10-12 to 15-17, and this was approved by the Secretary in December, 2014. Ultimately, the Secretary of DOL appointed 18 non-governmental members to the Committee who include:

Self-advocates for individuals with intellectual, developmental or other significant disabilities:

- Patrick Hendry, Mental Health America;
- Karen McCulloh, McCulloh and Associates;
- Santa Perez, People First of Nevada.

Providers of employment services, including those who employ individuals with intellectual or developmental disabilities in competitive integrated employment:

- Brian Itzkowitz, Goodwill Industries of Arkansas, Inc.;
- Christine McMahan, Fedcap

Representatives of national disability advocacy organizations for adults with intellectual or developmental disabilities:

- Alison Barkoff, The Bazelon Center for Mental Health Law;
- Ruby Moore, National Disability Rights Network;
- Mark Perriello, American Association of People with Disabilities (resigned April 26, 2015);
- Ari Ne'eman, Autistic Self Advocacy Network (appointed May 8, 2015).

Experts with a background in academia or research and expertise in employment and wage policy issues for individuals with intellectual or developmental disabilities:

- Valerie Brooke, Virginia Commonwealth University;
- David Mank, Indiana Institute on Disability and Community.

Representatives from the employer community or national employer organizations:

- Oswald Mondejar, Spaulding Rehabilitation Hospital Network, and Partners Home Care;
- Steve Pemberton, Walgreens;
- James Brett, The New England Council (appointed May 8, 2015).

Other individuals or representatives of organizations with expertise on increasing opportunities for competitive integrated employment for individuals with disabilities:

- Cesilee Coulson, Washington Initiative for Supported Employment;
- Sharyn Hancock, Workforce Essentials, Inc.;
- Rita Landgraf, Delaware Department of Health and Social Services;
- Lisa Pugh, Disability Rights Wisconsin;
- Fredric Schroeder, Interwork Institute at San Diego State University.

There are also seven federal officials who are members of the committee, as required in statute. These include the:

- Jennifer Sheehy, Assistant Secretary of the Office of Disability Employment Policy (ODEP)
- Portia Wu, Assistant Secretary of the Employment and Training Administration (ETA)
- Dr. David Weil, Administrator of the Wage and Hour Division (WHD)
- Sharon Lewis, Commissioner of the Administration on Intellectual and Developmental Disabilities (AIDD)

- John O'Brien, Senior Policy Advisor, Disabled and Elderly Programs Group at the Centers for Medicare and Medicaid Services (CMS), as the designee for the Director of CMS
- Bob Williams, Senior Advisor to the Deputy Commissioner for Retirement and Disability Policy at the Social Security Administration, as the designee for the Commissioner of Social Security
- Janet LaBreck, Commissioner of the Rehabilitation Services Administration (RSA)

Committee members' biographies can be found in Appendix C of this report.

### **Charter Establishing the Committee and Its Duties**

ODEP submitted an official Charter and membership balance plan, with the assistance of ETA and WHD, to the Secretary on September 8, 2014 and the Secretary approved the Charter on September 15, 2014. The Charter outlines the description of the Committee's duties as follows:

*The Committee advises the Secretary of Labor on the development and implementation of coordinated policies and job-driven strategies across federal agencies to improve opportunities for competitive integrated employment and economic advancement for individuals with intellectual, developmental or other significant disabilities, including both youth and adults. The Committee will evaluate the use of subminimum wages under section 14(c) of the Fair Labor Standards Act (FLSA) in light of the goals outlined for competitive, integrated employment and advise the Secretary of Labor on policies and practices that will lead to a significant and systematic reduction in the misuse of the 14(c) certification program and the dependence on subminimum wages and segregated service placements. In doing this, the Committee will:*

- (1) Review existing Federal policies to identify and recommend strategies and changes to break down barriers that impede pathways to competitive integrated employment outcomes for youth and adults with intellectual, developmental or other significant disabilities, including recommendations related to employment services, and long-term services and supports, family support and transportation as they relate to competitive, integrated employment;*
- (2) Provide recommendations for modernizing the service delivery system and expanding the implementation of job-driven strategies and practices to promote partnerships among education, workforce and rehabilitation entities, providers of employment-related long-term services and support, employers, and others that increase the marketable skills and competitive integrated employment outcomes of youth and adults with intellectual, developmental or other significant disabilities leading to economic self-sufficiency. This includes improving the knowledge, skills, and abilities of youth and adults with intellectual, developmental or other significant disabilities, educators, service professionals and families, building leadership and organizational capacity, increasing employer engagement, offering work-based learning, and strengthening accountability and making better use of data;*
- (3) Recommend systems-change strategies needed to ensure that competitive integrated employment is the first option for people with intellectual, developmental or other significant disabilities. This includes aligning policy, practice and funding across*

*Federal agencies to support competitive integrated employment and economic advancement as the preferred outcomes of job-driven training and related employment services through regional collaborations among a variety of public and private partners, data sharing, leveraging resources, and employment and earnings outcome measurement and evaluation; and*

- (4) Review the use of the certificate program under section 14(c) and recommend ways to improve oversight of the use of these certificates and reduce the reliance on such certificates.*

As outlined in the Charter, the Committee reports to both the Secretary of Labor and Congress. The Committee is required to prepare and submit this Interim Report to the Secretary of Labor, summarizing its progress, along with any interim findings, conclusions, and recommendations not later than one year after the date which the Committee is established or September 15, 2015. The Committee is also required to prepare and submit a Final Report, with findings, conclusions, and recommendations to the Secretary of Labor not later than two years after the date on which the Committee is established, or September 15, 2016. The Committee must also provide its Interim and Final Reports to the Senate Committee on Health, Education, Labor, and Pensions, and the House Committee on Education and the Workforce. As specified in Section 609, the Committee shall terminate one day after the date on which it submits its final report.

The records of the Committee and its formally and informally established subcommittees are handled in accordance with FACA requirements. These records are available for public inspection and copying subject to the Freedom of Information Act (5 U.S.C. 552).

The Committee's Charter can be found in Appendix B of this report.

### **Committee Meetings and Formation of Sub-Committees**

#### *First Meeting: January 22-23, 2015*

On December 24, 2014, ODEP published a Notice in the Federal Register announcing the first meeting of the Committee, open to the public, on January 22 and 23, 2015 to be held in-person at the U.S. Access Board in Washington, D.C. During the first day, the Committee elected a chairperson, as required by statute. Dr. David Mank, a public member from the state of Indiana and director of Indiana University's Institute on Disability and Community, was elected chairperson.

The first day of the first meeting covered a robust agenda including the opportunity for each Committee members to make opening remarks, an overview of the FLSA Section 14(c) program, and a panel of individuals with disabilities offering their perspectives about competitive, integrated employment. Secretary Perez also attended to swear in all of the Committee's appointed members.

On the second day of the first meeting, each Committee member was given the opportunity to share their perspectives on the one thing that the Committee should keep in mind as it started its deliberations. The Committee also discussed the sub-committees that were being established to support the full Committee's work and each member of the Committee was encouraged to sign up for a sub-committee. The next section of this report provides more detailed information on the sub-committees. The Committee then heard from four expert panels who addressed the following topics:

- What is Possible: What the Research Tells Us about the Employment of People with Disabilities in Competitive Integrated Employment
- Transitioning to Competitive Integrated Employment
- Civil Rights and Competitive Integrated Employment
- The Complexities of Securing Sustained Competitive Integrated Employment

The second day concluded with public testimony during which ten individuals or organizations presented testimony to the Committee.<sup>8</sup> Members of the public were invited to give testimony and instructed on how to do so in the Notice of the meeting posted in the Federal Register on December 24, 2014. The full meeting agenda, materials and minutes can be found at:

<http://www.dol.gov/odep/topics/date/20150120.htm>

#### *Sub-Committees Established*

At the first meeting, to facilitate the work of the full Committee within its statutory timelines, four sub-committees were created, as permitted under the Committee's charter. The four sub-committees identified by ODEP, ETA and WHD, which reflect key areas for detailed inquiry related to the Committee's charge, include:

- Transition to Careers
- Complexity and Needs in Delivering Competitive Integrated Employment
- Marketplace Dynamics
- Building Local and State Capacity

Members of the full Committee were provided a handout which described the subcommittees and enabled each Committee member to select the sub-committee s/he wished to serve on.

ODEP then reviewed and finalized the sub-committee membership, ensuring sufficient expertise and balance of perspectives on each committee. Each sub-committee identified a member to act as chair of the sub-committee and each sub-committee was also assigned a Designated Federal Officer (DFO) to support the sub-committee's work.

In carrying out their work, each sub-committee was instructed by the Committee chairperson to review relevant materials in their subject matter areas, including the Section 14(c) program, and

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<sup>8</sup> Public testimony can be found at: <http://www.dol.gov/odep/topics/date/ACICIEID.htm>

to draft preliminary findings, conclusions and recommendations for the full Committee to deliberate upon. The scope of the work of each subcommittee is further described in their respective chapters that appear later in this Interim Report.

Because the Committee is operating under FACA, sub-committees are prohibited from forwarding recommendations directly to DOL or congressional committees. Because Section 14(c) of the FLSA is a key area of focus for the Committee and to minimize the possibility that the sub-committee recommendations would be communicated directly to the DOL agency responsible for administering Section 14(c), WHD elected not to participate on any of the sub-committees.

#### *Second Meeting: March 23-24, 2015*

On March 9, 2014, ODEP published a Notice in the Federal Register announcing the second meeting of the Committee, open to the public, on March 23 and 24, 2015 to be held in-person at Gallaudet University in Washington, D.C. The Notice included information on the planned agenda and how members of the public could provide written testimony for this meeting.

During the first day of this meeting, the Committee reviewed the timeline for its work and heard from expert panels on the topics of mental health services and Medicaid issues. In the afternoon, the Committee broke into its four sub-committees and each sub-committee met to explore key areas of focus and next steps for their work in developing preliminary findings, conclusions and recommendations to bring to the full Committee. The full Committee then reconvened and each sub-committee reported out on their discussions regarding their priority areas of focus and agreed action steps. The full Committee then heard a follow-up presentation on WHD's enforcement role with regard to Section 14(c) of the FLSA. The Committee finished the day with a discussion on the Section 14(c) program and its regulations.

On the second day of the second meeting, the Committee heard a panel presentation on the topic of "Leading Systems Change" which offered a cross-systems, state-level perspective. The Committee also heard a panel presentation on the Individuals with Disabilities Education Act (IDEA). The sub-committees met a second time to continue exploring key areas of focus and they again reported back on their work to the full Committee. Then, two Committee members representing business—Steve Pemberton and Oz Mondejar—made a presentation the Committee. Nine individuals or organizations submitted written testimony that was distributed to Committee members and included in the public record for this meeting. The full meeting agenda, materials and minutes can be found at: <http://www.dol.gov/odep/topics/date/20150323.htm>

#### *Third Meeting: May 11-12, 2015*

On April 22, 2014, ODEP published a Notice in the Federal Register announcing the third meeting of the Committee, open to the public, on May 11 and 12, 2015 to be held via webinar.

The Notice included information the planned agenda and how members of the public could participate in the webinar. The notice also included information on how member of the public could provide testimony to the Committee during the webinar or submit written testimony to the Committee which would be included in the record of the meeting.

During the first day of this meeting, the Committee heard reports from two of the sub-committees. The Committee also heard testimony from pre-registered members of the public and a presentation on Section 503 of the Rehabilitation Act, as amended.

On the second day of the second meeting, the Committee heard reports from two of the sub-committees. The Committee also heard a presentation on provisions for jobseekers with disabilities in WIOA. The Committee ended the meeting with a discussion on the various sub-committees work and next steps in the Committee's timeline and work plan for submission of the Interim Report. Two individuals or organizations provided verbal testimony to the Committee during the meeting. Two individuals or organizations submitted written testimony that was distributed to Committee members and included in the public record for this meeting. The full meeting agenda, materials and minutes can be found at:

<http://www.dol.gov/odep/topics/date/20150401.htm>

#### *Fourth Meeting: July 13-14, 2015*

On June 22, 2015, ODEP published a Notice in the Federal Register announcing the fourth meeting of the Committee, open to the public, on July 13 and 14, 2015 to be held in-person at the U.S. Access Board in Washington, D.C. The Notice included information on the planned agenda and how members of the public could provide testimony during the public comment period for this meeting or provide written statements to be included in the record of the meeting.

During the first day of this meeting, the Transition to Careers sub-committee and the Complexity and Needs in Delivering Competitive Integrated Employment sub-committee reported out to the full Committee on their preliminary findings, conclusions and recommendations for the topic areas covered under the scope of each sub-committee. The full Committee had an opportunity to ask questions and engage in discussion regarding each sub-committee's report. The Committee also heard a presentation on ODEP's Employment First State Leadership Mentoring Program initiative, including participating states' accomplishments and challenges with respect to Employment First policy, and a presentation from an expert panel that addressed experiences with provider transformation to competitive integrated employment as the priority service option. The Committee was joined by DOL Deputy Secretary Christopher Lu and marked the 25th anniversary of the Americans with Disabilities Act (ADA) and its connection to the Committee's charge. The Committee also heard public testimony.

During the second day of this meeting, the Building State and Local Capacity sub-committee and the Marketplace Dynamics sub-committee reported out to the full Committee on their

preliminary findings, conclusions and recommendations for the topic areas covered under the scope of each sub-committee. The full Committee had an opportunity to ask questions and engage in discussion regarding each sub-committee's report. Additionally, each sub-committee presented its preliminary findings, conclusion and recommendations on the FLSA Section 14(c) program and the Committee engaged in discussion on this topic. Finally, the Complexity and Needs in Delivering Competitive Integrated Employment sub-committee and the Marketplace Dynamics sub-committee jointly presented their preliminary findings, conclusions and recommendations on the Ability One® program, followed by questions and discussion with the full Committee. The meeting concluded with a discussion regarding next steps for finalizing the Interim Report. The full meeting agenda, materials and minutes can be found at: <http://www.dol.gov/odep/topics/date/20150713.htm>

#### *Fifth Meeting: August 10, 2015*

On July 24, 2015, ODEP published a Notice in the Federal Register announcing the fifth meeting of the Committee, open to the public, on August 10, 2015 to be held via webinar. The Notice included information on the planned agenda and how members of the public could participate in the webinar and/or provide written statements to be included in the record of the meeting. Statements could be submitted via US Mail or as email attachments.

During the webinar, the Committee discussed the draft of this Interim Report and [to be completed after webinar occurs.]

#### **Conclusion and Committee's Plans for Year Two**

The primary focus of the Committee's work is to increase opportunities for competitive integrated employment for people with IDD or other significant disabilities. The Committee members share the belief that building capacity for competitive integrated employment is the first priority for increasing the employment participation rate of people with IDD or other significant disabilities. Increasing competitive integrated employment will also reduce reliance on placement in segregated work and non-work programs and in the use of Section 14(c) certificates.

The Committee's work in its first year has been both expansive and intensive. With input from the public at many points, the Committee has gained extensive knowledge of stakeholder perspectives into the many issues and topics within the purview of its charge. Over XXX public comments via the Committee's email address have come in thus far, while XX individuals or organizations have provided public testimony to the Committee and XX individuals or organizations have submitted written statements to the Committee. Additionally, the Committee has received information from numerous expert presenters, which has allowed the Committee as a whole to extend its own expertise on the topics it is charged with addressing. What follows

here are the preliminary findings, conclusions and recommendations of the Committee, based on its work to date.

During the second year of its term, the Committee will continue reviewing, refining and where necessary adding to its preliminary findings, conclusions and recommendations in order to finalize these for the Final Report due to the Secretary of Labor and Congress on September 15, 2016.

The Committee is required to meet at least eight (8) times over the course of its two-year term. The Committee held four (4) meetings during its first year. Four (4) additional meetings will be held during the second year, including a face-to-face meeting in Washington, DC that has already been scheduled for October 14-15, 2015.

The Committee will continue to solicit public input throughout its second year. To this end, there will be on-going opportunities for members of the public to submit written input via the Committee's email address: [IntegratedCompetitiveEmployment@dol.gov](mailto:IntegratedCompetitiveEmployment@dol.gov). There will also be opportunities for public comment and submission of written statements for the record at each of the Committee's remaining meetings.

**Chapter Two: Transition to Careers**

**Chapter Three: Complexity and Needs in Delivering Competitive Integrated Employment**

**Chapter Four: Marketplace Dynamics**

**Chapter Five: Building State and Local Capacity**

**Chapter Six: Section 14(c) Program**

**Chapter Seven: AbilityOne Program**

## Appendix A: Statutory Language establishing the Committee

# Appendix B: Advisory Committee Charter

# Appendix C: Committee Member Biographies

Appendix D: Relevant Statutory and Regulatory Provisions  
Currently Governing the Administration of the Section 14(c)  
Program